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THE ORGANIZATION AND PROCEDURE OF THE COURTS¹

HENRY W. JESSUP

THE remarks of the President of the United States before the American Bar Association in Washington in October last were not so much an original statement as they were the summation of a criticism of the administration of justice in our courts which has been made in one form or another for many years, namely, that the justice administered in a court is not identical with that justice which the innate sense of justice in every human breast by intuition conceives to be applicable to the particular dispute.

The President repeated his conversation with a lawyer on the rational validity of precedents in the administration of justice, which he closed by asking, "After all, isn't our object justice?" And the lawyer replied, "God forbid. We should be very much confused if we made that our standard. Our standard is to find out what the rule has been and how the rule that has been applies to the case that is."

Mr. Justice Crane of the supreme court of this state, in his remarks before the Phi Delta Phi Club of New York, before this meeting of the bar association in Washington, had stated this paradox in substantially identical form. It has been recognized from the beginning of the development of our law. Doctor John Norton Pomeroy in examining the origin of equity jurisprudence and showing the arbitrariness and formalism of the original five actions that constituted enforcement of civil rights in the earliest period of Roman law, quotes from the *Institutes*: "All these actions of the law fell gradually into great discredit, because the over-subtlety of the ancient jurists made the slightest error fatal." Going on later to emphasize the importance of a correct notion of equity, which he says is

¹ Read at the meeting of the Academy of Political Science, November 19, 1914.

not a theoretical but a very practical inquiry, he observes: "If a certain theory of its nature which now prevails to some extent should become universal, it would destroy all sense of certainty and security which the citizen has, and should have, in respect to the existence and maintenance of his juridical rights." These observations, I may note, were made in 1881. And this conception to which he refers, he says, was known to the Roman jurists, and was described by the phrase, *arbitrium boni viri*, which he translates, "the decision upon the facts and circumstances of a case which would be made by a man of intelligence and of high moral principle." He closes by observing: "It needs no argument to show that if this notion should become universally accepted as the true definition of equity, every decision would be a virtual arbitration, and all certainty in legal rules and security of legal rights would be lost."

This leads me to observe by way of preface that it is the function of conferences such as this, and of deliberations of associations of the bar everywhere to try to re-solve this paradox and approximate the administration of justice in the particular case in a court of justice to that *arbitrium boni viri*, or intuition of the right thing that is exercised by the man of intelligence and conscience. Are red-tape and meticulous technicalities, elaborate codes and conflicting jurisdictions, aids to that approximation?

When men of common sense are considering the question of the performance of duty by their courts of justice it is highly reasonable to assume that they will apply to that inquiry and discussion every common-sense idea or test that is available. During the last twenty years a great stride forward has been made in respect to increased efficiency in every line of practical endeavor, so that we have to-day what are known as "efficiency experts." Economy of effort, economy of fuel, standardization of parts and function, the diminution of the intermediate cogs in the machine, the more direct application of power to the propeller—in other words, the elimination of friction and waste—is the object of the efficiency expert. Every one of these ideas may be applied to any institution, even to the courts of justice. They are sacred, in a sense, whether you call it a historic sense,

or a constitutional sense, but there is no reason why, when the time comes for a discussion of whether or not changes shall be made, the most practical tests should not be applied in this very respect of efficiency which is now a determining factor in forming an estimate of the effectual operation of any enterprise or business or system. Therefore, if we should re-state the inquiry with regard to the administration of justice in practical terms, we should ask to see if the result desired is secured without friction or waste,—and the word “waste” includes waste of time, waste of energy, waste of material. The answer to that inquiry can only be negative.

There is a great waste of power. The energies of judges of learning and ability are frittered away by irritating and vexatiously long-drawn-out procedural applications which involve *how*, and not *what*. They are adjective, not substantive. The agitation and litigation of such matters merely defers, delays or complicates the determination by a court of justice of the issues of fact between the two particular litigants. This involves, of course, a waste of time, and when it comes to the determination of questions of fact or of law and the actual trial of a case, a justice of our supreme court of New York county may enter the trial of that case on Monday after having been a week or more in special term part I with a calendar of from ninety to one hundred practice motions *per diem* to be dealt with before him, many of which still remain undisposed of and perhaps are seething in his mind.

Then we have too many cogs in our judicial machine; that is to say, we have too many courts—courts of general, of special, and of limited jurisdiction. A litigant can go just so far in one of these courts in which he is advised to bring his particular proceeding; then, after several years of litigation, he perhaps finds that there is still something to be done in another court before the result can be duly achieved in the court he began in, or that he has lost his remedy because he proceeded in the wrong court. Not to mention our federal courts, we have in New York our supreme court, with its appellate branches, and our court of appeals. We have our city courts and our county courts. We have our surrogates' courts and

our municipal courts. We have our magistrates' courts and our courts of general and special sessions and the criminal branch of the supreme court. Disregarding absolutely and for the purposes of this discussion what gave rise to their organization or the purpose of the constitutional embodiment of any or all of these courts, we ask, Is there any valid reason why they should be continued with this sometimes conflicting, often overlapping or concurring jurisdiction, and with such remedial inequality? Is the average litigant so benefited as that any valid objection could be raised to their elimination and to the standardization of our whole judicial system by taking these courts up into the supreme court, making it a general court of jurisdiction at law and in equity, with power to grant every remedy that is applicable to the facts as proved in the particular case before it? That is, approximating the English system, could not the various particular kinds of work that have been specialized in these special courts be committed to the administrative divisions of the supreme court so that we might have a probate division, by which the work now done by the surrogate might be done, and an equity division, a tort, contract and commercial-law division, and so on, a system regulated by rules of the appellate division in each department, and hence elastic and adjustable to the volume of business at any particular time? The erroneous assignment of a cause to a wrong division should not be jurisdictionally defective, but on discovery, the cause should be transferable to the particular division without loss of priority or position. The Committee of Seven of the Phi Delta Phi Club of the city of New York, which has for months been engaged in the examination of this question, has made a report which has been privately published and which embodies a recommendation of this character in the form of suggested amendments to the judiciary article of the constitution.¹ In the particular we are now discussing, this report makes certain suggestions, drastic as we supposed. The only criticism so far received from members of the bar who have examined them is

¹ A copy of part II of the report recommending these changes is appended to this paper as an exhibit for the information of such as may desire to study the matter further.

that they are too conservative. The report deals with the propriety of yielding, for the time being (so that the change will not be too abrupt), to the feeling that there should be a "poor man's court," that is, a court available by locality of exercise of jurisdiction to everybody. In the ordinary county of this state the county court is such a court. The county seat is the mecca of the surrounding inhabitants. In great cities like the city of New York the municipal court has been this "poor man's court." Therefore, the report suggests that accompanying the standardization of the supreme court by taking up into it the city and surrogates' courts, there be preserved the system of county or neighborhood courts which in turn shall be standardized by taking up into them in appropriate parts of the state these municipal courts and making them divisions of the county court at the particular places where more than one part is required to do the business. That is to say, we should have two courts: the neighborhood court, limited in the pecuniary extent of the judgment it could award to either party but within that pecuniary limit having broad and general powers to do justice or equity between the parties, and then the supreme court, unlimited in any respect as to its jurisdiction. Of course the court of appeals would remain the court of last resort.

The second feature of the report is that the results desired from such a standardization are not going to be secured if we are still to have waste of energy and time. This waste of energy and time arises out of that which unduly engrosses our courts, *i. e.*, our highly meticulous and highly articulated code of civil procedure.

For the purpose of discussion before the constitutional convention the reports that have been made by national committees, such as that of the National Economic League or the American Bar Association, which deal with uniform legislation, and with short practice acts in all the states, need not be referred to, because they are within the province and power of the legislature, and do not require constitutional embodiment or direction or authority. We believe that the movement for uniform legislation which has already found acceptance in respect to negotiable-instruments or bills-of-lading laws and the like,

and which, we trust, will extend to the laws of marriage and divorce, and to every other feature of our ordinary law, is bound to come. We believe also that even the state of New York will yield to the influences that demand a short practice act, so that procedure will be relieved from the hard-and-fast and highly technical channels of a code, and will be left more and more to the control of an elastic and adaptable scheme of rules of court—in the formulation of which, however, it may be suggested in passing, the bar should have a voice equally with the bench. And so the report of the Committee of Seven suggests that an additional idea be adopted from the English system; *i. e.*, a constitutional provision authorizing the appointment by the appellate divisions of the different departments where this waste of effort and energy is going on, of commissioners, or supreme court masters, to whom all procedural and interlocutory matters should be assigned by some system of rotation so as to equalize their work. That is, as soon as a cause is at issue it should be sent *pro forma* to a master. And before him, on his summons for direction, the parties and their counsel should appear and at an informal hearing—at which, however, their testimony could be taken on oath—he should determine all questions as to the forms of pleadings, as to bills of particulars, as to injunctions or receiverships, and should boil the case down by eliminating sham or frivolous or dilatory issues, and frame an issue which thereupon would go to a justice of the supreme court who would try that issue so boiled down and relieved of all interlocutory red-tape.

To engraft such a scheme of relief upon our judicial system requires constitutional amendment, not as a matter of law, we believe, but as a matter of fact, for the following reason. This same scheme was suggested by the Commission on the Law's Delays, one of our ablest commissions, appointed pursuant to chapter 485 of the Laws of 1902. The legislature enacted a bill to carry their recommendations into effect, but it was vetoed by the governor on the opinion of the then attorney-general that it was unconstitutional. The impression at the time was that it was desired to veto the bill because it would affect disastrously the distribution of patronage in the appoint-

ment of referees, to whom part of this work of relieving the bench is now committed. In respect to references to hear and determine issues which present questions so complicated that they would unduly preëempt the time of the court in the trial of the causes of other litigants, there is no question that the appointment of masters and commissioners would, by simplifying the issues to be tried, gradually result in destroying the referee system. The result, as many justices of the supreme court have admitted to the speaker, would be to relieve them from the intolerable pressure of applicants for patronage, a pressure which dates back many, many years. The Honorable Noah Davis, who was a presiding justice in the supreme court in this department for many years, told me, after his retirement from the bench, that I could have no conception how many or how reputable were the men who from time to time had come to him and besought him to give them a reference to compute to carry their families over Sunday. That is the least intolerable form of the pressure, personal or political, that is exerted upon the incumbent of judicial office.

The third material suggestion that grows out of this effort to eliminate this procedural work from the domain of the justice on the bench is addressed to a more debatable point. One of the most remarkable results of the convention that adopted the constitution as it now stands was the limitation on the powers of the court of appeals, the elimination from their consideration of questions of fact and the precluding of their review of certain unanimous decisions of the appellate division. If there is any reason in the world for the mediation of the appellate term and the appellate division between the determination of the judges of the supreme court and the determination of a court of last resort, it is not founded on essential justice. A county judge may try a man for a felony, and appeal from his determination goes directly to the court of appeals. If a man's life requires no intermediation of subordinate appellate courts for his protection, why should his pocket? The old general term, it is true, succeeded by the appellate division, has been composed almost without exception of men who have commanded the respect of the bar for their energy, their ability

their learning, and their earnest attempt to facilitate the business of the court. And yet, from the standpoint of the litigants, it is hard to explain why the court of last resort should, when it comes to determining finally the controversy, be precluded from going into the case in all its aspects of fact and of law. Take the rule of the preclusive effect of unanimity of the appellate division in certain cases. That unanimity may not be, after all, entire. It may have been a unanimous determination to reverse the justice before whom the parties and their witnesses appeared, and who had the consequently increased opportunity of forming a correct judgment on the facts. At least in respect to such cases there has not been unanimity of judicial determination in that particular case, and therefore the committee has suggested that this matter be reconsidered, and that where there is no unanimity of both trial and intermediate appellate court, the appellant should be entitled to a careful scrutiny of the whole record in all its aspects by the court of last resort.

The reason for limiting the jurisdiction of the court of appeals at the last constitutional convention was because it was so far behind in its work that even the erection of a second division of that court had not sufficed to clear up its calendar. The organization of the appellate division was a scheme to reduce the demands upon the time and energy of the court of last resort. In that particular respect it has been successful. Therefore the Committee of Seven had to consider the effect of its recommendation in this regard, and it came to the conclusion that it would be wise to eliminate, except in rare instances, all procedural, interlocutory matters from the consideration of the justices in the first instance. In this way, arguing from the operation of the practice in England, it is believed that the large percentage of appeals which fill our law reports and which involve the adjective law as distinct from the substantive law would inevitably be materially reduced, if not eliminated wholly, that the work of the appellate courts would thereby be lessened, and that there would then be no valid reason why the court of last resort should be relieved in any respect or in any degree of the labor of considering the whole case in all its aspects, and of rendering in its final judgment a determination, nor be absolved

by reason of any lack of power to do this or to do that under the law as it stands. If in any system of administering justice we desire to secure that approximation referred to by the words *arbitrium boni viri*, or if we wish to secure general just results under the law as it has been as applicable to the case as it is, it is essential that the litigants who appeal to these courts of justice should be satisfied that they have had a square deal. It is obvious that the time allotted to this paper does not permit of any extended discussion of the detailed working-out of these three main recommendations. They are shown by the annexed exhibit and they are being thoroughly studied and criticized by committees of the County Lawyers' Association, the New York City Bar Association and the State Bar Association, and by individual lawyers and judges throughout the state.

I close with the recommendation that in respect to all of the proposed topics for the consideration of this approaching convention the same practice be followed that the Committee of Seven has adopted, *i. e.*, the practice of stating in black and white and by italics and parentheses, where there are already constitutional provisions dealing with the topic to be considered, the exact nature of the change or development desired, whether it be the repeal or the new enactment advocated in behalf of ballot reform or suffrage or municipal home rule or referendum or franchises or taxation or any other question. If the proposition which you advocate is formulated in the words which you desire to write into the constitution, then everybody can tell what it is desired to accomplish, and the colored individual in the verbal woodpile, if there be one, is sure to be detected. There is nothing that so crystallizes one's own thought and conviction as the attempt to put it in appropriate words. "Great is the power of statement."

APPENDIX TO MR. JESSUP'S PAPER.

Report to the PHI DELTA PHI CLUB of New York City, by the Committee of Seven appointed to consider and recommend possible amendments to the Judiciary Article of the Constitution of the State of New York:

PART II

We recommend, accordingly, that the Sections of the Judiciary Article be amended as below, by inserting the new matter indicated by italics, and by eliminating the present text when the words are bracketed thus [].

§ 1. SUPREME COURT; HOW CONSTITUTED; JUDICIAL DISTRICTS.

The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the Justices now in office, and of the Judges *and Surrogates* transferred thereto by the fifth section of this article, all of whom shall continue to be Justices of the Supreme Court during their respective terms, [and of twelve additional Justices who shall reside in and be chosen by the electors of, the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors.] The successors of said Justices shall be chosen by the electors of their respective judicial district. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the Justices to be thereafter elected in the districts so altered. The Legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last State, or Federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last State or Federal census or enumeration. [The Legislature may erect out of the second judicial district as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of

additional justices in the new district not exceeding the limit herein provided.]

Const. 1846, art. VI, § 6, amended in 1905.

§ 2. JUDICIAL DEPARTMENTS; APPELLATE DIVISION; HOW CONSTITUTED; GOVERNOR TO DESIGNATE JUSTICES; REPORTER; TIME AND PLACE OF HOLDING COURTS. *Supreme Court Commissioners.*

The Legislature shall divide the State into four judicial departments. The first department shall consist of the counties of New York and of the Bronx; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court, consisting of seven Justices in the first department, and of five Justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five Justices shall sit in any case.

From all the Justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the Presiding Justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other Justices shall be designated for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the Justices so designated to sit in the Appellate Division, in each department, shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any Justice in the Appellate Division, or in case the Presiding Justice of any Appellate Division shall certify to him that one or more additional Justices are needed for the speedy disposition of the business before it. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the Presiding Justices of the several departments at a meeting called by the Presiding Justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No Justice of the Appellate Division shall, within the department to which he may be designated to perform the duties of an Appellate Justice, exercise any of the powers of a Justice of the Supreme Court, other than those of a Justice out of court, and those pertaining to the Appellate Division, or to the hearing and decision of motions submitted by consent of counsel, but any such Justice, when not actually engaged in performing the duties of such

Appellate Justice in the department to which he is designated, may hold any term of the Supreme Court and exercise any of the powers of a Justice of the Supreme Court in any county or judicial district in any other department of the State. From and after the last day of December, *nineteen hundred fifteen* [eighteen hundred and ninety-five], the Appellate Division shall have the jurisdiction now exercised by *it* [the Supreme Court at its General Terms and by the General Terms of the Court of Common Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City of Brooklyn], and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The Justices of the Appellate Division in each department shall have power to fix the times and places for holding Special Terms therein, and to assign the Justices in the departments to hold such terms; or to make rules therefor.

They shall also have power to provide by appropriate rules for Divisions of the Court at Trial and Special Terms, such as Probate Division, Equity Division, etc., and to prescribe the number of justices in each department to be assigned to such several Divisions, and to revoke, or alter, such rules as necessity may require.

They shall also have power to appoint Supreme Court Commissioners or Masters, in such numbers in each department as the Legislature may provide, but not exceeding one for each thousand of population in the department, to exercise the powers and perform the duties defined in § 6 below, or which the Legislature may prescribe.

Const. 1846, art. VI, §§ 7 and 28, added in 1882, amended in 1905.

§ 3. JUDGE OR JUSTICE *when* NOT TO SIT IN REVIEW; TESTIMONY IN EQUITY CASES.

No Judge or Justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised. *Any Justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county* (transferred from § 6).

Const. 1846, art. VI, § 8.

§ 4. TERMS OF OFFICE; VACANCIES, HOW FILLED.

The official terms of the Justices of the Supreme Court shall be
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fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Const. 1846, art. VI, §§ 9, 13.

§ 5. *New York City Court[s and the Surrogates' Courts ABOLISHED; JUDGES BECOME JUSTICES OF SUPREME COURT; SALARIES; JURISDICTION VESTED IN SUPREME COURT.*

[The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo, and the City Court of Brooklyn.] *The City Court of the City of New York, and the Surrogate's Court in every County are abolished from and after the first day of January, one thousand nine [eight] hundred [and] sixteen [ninety-six], and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the Clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The Judges and Surrogates of said courts in office on the first day of January, one thousand nine [eight] hundred [and] sixteen [ninety-six], shall, for the remainder of the term for which they were elected or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. But this shall not apply to those Counties where the County Judges are also Surrogates. In such counties the County Judge shall no longer act as Surrogate after the first day of January, 1916, but his office and term as County Judge shall not be hereby otherwise affected. In respect to such counties the Legislature may provide for an additional Justice of the Supreme Court if the business heretofore done by the existing Surrogate's Court require it.*

The Legislature shall prescribe the time and manner of transfer of the clerks of the Surrogates' Courts and offices throughout the State that they may be available for the business of the Probate Division of the Supreme Court if and when provided for by the appropriate Appellate Division under § 2 hereof. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties.

Their successors shall be elected as Justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. [Appeals from inferior and local courts now heard in the Court of Common Pleas for the City and County of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such Justice or Justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.]

New.

§ 6. *Supreme Court commissioners or masters.* [CIRCUIT COURTS AND COURTS OF OYER AND TERMINER ABOLISHED.]

From and after July 1st, 1916, in any judicial department of the State, where, in the judgment of the Justices of the Appellate Division, or of a majority thereof, the volume of business demands it, there may be appointed by such Appellate Division Masters, or Supreme Court Commissioners, who shall be members of the bar, of at least years' standing, who shall exercise in respect to interlocutory and procedural matters in any litigation pending in such department, including the direction of summary judgments, such powers and functions and who shall receive such compensation as the Legislature may prescribe; but the Legislature may commit to each Appellate Division the power to prescribe such power and functions, and the manner of their exercise, by rules, which such Appellate Division may from time to time amend or revoke.

In respect to matters which may be thus committed to Masters thus appointed, their orders shall be final until reversed in the manner to be prescribed by law.

The compensation and allowances of such Commissioners shall be provided for and paid as are the salaries of Supreme Court Justices.

[Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination.]

New.

§ 7. COURT OF APPEALS.

The Court of Appeals is continued. It shall consist of the Chief Judge and Associate Judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms

of the Chief Judge and Associate Judge shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often as a majority of the Judges of the Court of Appeals shall certify to the Governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the Governor shall designate not more than four Justices of the Supreme Court to serve as Associate Judges of Court of Appeals. The Justices so designated shall be relieved from their duties as Justices of the Supreme Court and shall serve as Associate Judges of the Court of Appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the Supreme Court. The Governor may designate Justices of the Supreme Court to fill vacancies. No Justice shall serve as Associate Judge of the Court of Appeals except while holding the office of Justice of the Supreme Court, and no more than seven Judges shall sit in any case. [As amended in 1899.]

Const. 1846, art. VI, § 3, amended in 1869.

§ 8. VACANCY IN COURT OF APPEALS, HOW FILLED.

When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Associate Judge shall be made in like manner; but in such case, the person appointed Chief Judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of Judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Const. 1846, art. VI, § 3, amended in 1869.

§ 9. JURISDICTION OF COURT OF APPEALS.

After the last day of December, one thousand *nine hundred and fifteen* [eight hundred and ninety-five], the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited

to the review of questions of law *whenever the decision of the Appellate Division appealed from be unanimous in affirmance of the Court below. But, if the Appellate Division be divided, or if its decision appealed from be one of reversal the Court of Appeals may review the facts and the law.* But no unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them.

The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals, *and may in any case allow an appeal and certify that justice requires that the Court of Appeals should review the facts as well as the law. Where the Appellate Division shall refuse to so allow an appeal and to so certify any Judge of the Court of Appeals shall have power to allow such an appeal.*

The Legislature may *otherwise* [further] restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any *Appellate Division* [General Term] before the last day of December, one thousand *nine hundred and fifteen* [eight hundred and ninety-five], but appeals therefrom may be taken under *then* existing provisions of law.

New.

§ 10. JUDGES NOT TO HOLD ANY OTHER OFFICE.

The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

Const. 1846, art. VI, § 10, amended in 1869.

§ 11. REMOVAL OF JUDGES.

Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein, *or they may be impeached before the Court for the Trial of*

Impeachments, either by resolution of the Assembly or on written charges by any Bar Association in the State preferred to the Governor, who in such case shall convene the said Court. All other judicial officers, except Justices of the Peace and Judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Const. 1846, art. VI, § 11, amended in 1869.

§ 12. [AM'D. 1909] COMPENSATION OF JUDGES ; TENURE OF OFFICE.

No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. *Every Judge of the Court of Appeals, including Justices of the Supreme Court while serving as Associate Judges, shall receive from the State the sum of seventeen thousand five hundred Dollars per year. The Chief Judge shall receive fifteen hundred dollars per year additional.* Each Justice of the Supreme Court shall receive from the State the sum of \$10,000 per year. Those assigned to the Appellate Divisions in the third and fourth departments shall each receive in addition the sum of \$2,000, and the presiding justices thereof the sum of \$2,500 per year. Those justices elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. These justices elected in any judicial department other than the first or second, and assigned to the Appellate Divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the Appellate Division or designated by the governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition ten dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said *judges or justices* for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those *who become such by virtue of § 5 hereof, or who may be hereafter elected.*

§ 13. TRIAL OF IMPEACHMENTS.

The Assembly shall have the power of impeachment *of any judicial or public officer*, by a vote of a majority of all the members elected, *preferred to the Senate*. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators or the major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the *Governor or to the Senate*, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in case of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Const. 1846, art. VI, § 1, amended in 1869.

§ 14. [AM'D. 1913.] COUNTY COURTS. *There shall be one in each and every county of the state, including New York County as hereinbelow set forth.*

The [existing] county courts are continued [and]. The judges *of the present county courts* [thereof] now in office shall hold their offices until the expiration of their respective terms. [In the county of Kings there shall be four county judges.] The number of county judges in any county may also be increased, from time to time, by the legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand, or major fraction thereof, of the population of such county. [The additional county judges in the county of Kings shall be chosen at the general election held in the first odd-numbered year after the adoption of this amendment.] The additional county judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office. All county judges, including successors to existing judges, shall be chosen by the electors of the counties for the term of six years from and including the first day of January following their election. County courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where [the] *either plaintiff or defendant*[s]

resides in the county, and in which the complaint demands judgment for a sum not exceeding \$2,000. *County Courts shall have all powers legal or equitable requisite to finally determine the controversies of which they have jurisdiction.* But the legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds \$2,000, [or in which any person not a resident of the county is a defendant. Courts of sessions, except in the county of New York, are abolished from and after the last day of December, 1895. All the jurisdiction of the court of sessions in each county, except the county of New York, shall thereupon be vested in the county court thereof, and all actions and proceedings then pending in such courts of sessions shall be transferred to said county courts for hearing and determination.] Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

The existing Municipal Courts are abolished from and after the 31st day of December, 1915, and the justices thereof then in office shall hold their offices until the expiration of their respective terms but shall become judges of the County Court of the county within whose bounds the particular municipal court of which they were justices exercised jurisdiction. All the jurisdiction of such municipal courts as now exercised shall thereupon be vested in the County Court of the particular county within whose bounds such municipal court or district thereof existed, and all actions and proceedings then pending shall be transferred to such county courts for hearing and determination, and all seals, records, documents, papers and books delivered to the Clerk of the County Court. In any county where there may thus be by reason hereof more than one Judge of the County Court, the said judges may, with the consent of the supervisors, or within the City of New York the Board of Estimate and Apportionment, appoint as many Divisions and designate as many court rooms and local clerks' offices for such Divisions as may be necessary to transact the judicial business theretofore transacted by both the existing County Court, if any, and by the Municipal Courts with their various districts in such particular county. The County Court of New York County shall be constituted of the Justices of the Municipal Court in and for the districts within its territorial limits. The Legislature shall by appropriate enactments in respect to salary provide for the organization of such County Court in any county where there is no such court at present.

From Id., Art. VI, § 15, as am'd in 1869. Further am'd in 1913.

§ 15. [SURROGATES' COURTS; SURROGATES, THEIR POWERS AND JURISDICTION; VACANCIES.] *County judges.*

[The existing Surrogates' Courts are continued, and the Surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogates' Courts shall have the jurisdiction and powers which the Surrogates and existing Surrogates' Courts now possess, until otherwise provided by the Legislature. The County Judge shall be Surrogate of his county, except where a separate Surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate Surrogate, the Legislature may provide for the election of a separate officer to be Surrogate, whose term of office shall be six years. When the Surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury.] No County Judge [or Surrogate] shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of County Judge [or Surrogate] shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any County Judge [or Surrogate] shall not be increased or diminished during his term of office. *But the Legislature may provide for increased compensation of County Judges whose jurisdiction is exercised within the territorial limits of a city of the first class.—Until such provision shall have been made or until the expiration of their respective terms of office to which on December 31st, 1915, they may severally have been elected, municipal court justices who then shall become by operation of this article county judges, shall continue to receive the salaries theretofore received by them to be paid in the same manner and from the same source as theretofore during their several terms to which they have been elected.* [For the relief of Surrogates' Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of Surrogates, with authority to try issues of fact by jury in probate cases.]

Const. 1846, art. VI, § 15, amended in 1869.

§ 16. LOCAL JUDICIAL OFFICERS.

The Legislature may, on application of the board of supervisors, provide for the election of local officers, [not to exceed two in any county,] to discharge the duties of County Judge [and of Surrogate,] in cases of [their] inability or of a vacancy, and in such other cases as

may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Const. 1846, art. VI, § 16, amended in 1869.

§ 17. JUSTICES OF THE PEACE; [DISTRICT COURT JUSTICES.]

The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect Justices of the Peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the Peace and judges or justices of inferior courts not of record, and their clerks may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the Peace [and District Court Justices] may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

Const. 1846, art. VI, § 18, amended in 1869.

§ 18. INFERIOR LOCAL COURTS.

Inferior local courts of civil *or of* [and] criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in *any* [other] respect[s] than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

Const. 1846, art. VI, § 19, amended in 1869.

§ 19. CLERKS OF COURTS.

Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The Justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said Justices. The Clerk of the Court of Appeals shall keep his office at the seat of government. The Clerk of the Court of Appeals and the clerks of the Appellate

Division shall receive compensation to be established by law and paid out of the public treasury.

Const. 1846, art. VI, § 20, amended in 1869.

§ 20. NO JUDICIAL OFFICER, EXCEPT JUSTICE OF THE PEACE, TO RECEIVE FEES; NOT TO ACT AS ATTORNEY OR COUNSELOR.

No judicial officer, except Justices of the Peace, shall receive to his own use any fees or perquisites of office; nor shall any Judge of the Court of Appeals, or Justice of the Supreme Court, or any County Judge [or Surrogate] hereafter elected [in a county having a population exceeding one hundred and twenty thousand,] practice as an attorney or counselor in any court of record in this State, or act as referee. [The Legislature may impose a similar prohibition upon County Judges and Surrogates in other counties.] No one shall be eligible to the office of Judge of the Court of Appeals, Justice of the Supreme Court, or [except in the county of Hamilton, to the office] of County Judge [or Surrogate], who is not an attorney and counselor of this State.

Const. 1846, art. VI, § 21, amended in 1869.

§ 21. PUBLICATION OF STATUTES.

The Legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

Const. 1846, art. VI, § 23, amended in 1869.

§ 22. TERMS OF OFFICE OF PRESENT JUSTICES OF THE PEACE AND LOCAL JUDICIAL OFFICERS.

Justices of the Peace and other local judicial officers provided for in sections seventeen and eighteen, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

Const. 1846, art. VI, § 25, amended in 1869.

§ 23. COURTS OF SPECIAL SESSIONS.

Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

Const. 1846, art. VI, § 26, amended in 1869.